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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/914,560	07/31/2002	Robert Marc Clement	698.22-US1	9536
24392	7590	03/19/2004	EXAMINER	
RUTAN & TUCKER, LLP P.O. BOX 1950 COSTA MESA, CA 92628-1950			JOHNSON III, HENRY M	
			ART UNIT	PAPER NUMBER
			3739	7
DATE MAILED: 03/19/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/914,560

Applicant(s)

CLEMENT ET AL.

Examiner

Henry M Johnson, III

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 02 January 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

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## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 10, 20-31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 10 is indefinite for lacking a specific reference to a claim.

Claim 20 is indefinite due to failure to disclose how the epidermal is bypassed during the procedure. The epidermal layer is specifically disclosed, yet the treatment indicates radiating the dermal through the basal layer without regard to the epidermal layer.

Claim 31 is indefinite as it is not clear how the chromophore is effective in the epidermal layer when it is not disclosed as part of the method.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8 10-13 17-19 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5,312,395 to Tan et al. Tan discloses a dye laser treatment device and method for using the device to treat tissue. The apparatus is disclosed as a flashlamp-pumped tunable dye laser, tuned to 504, 590, 694, 720 and 750 nm using a variety of dye mixtures. The light is

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delivered through a 1 mm diameter optical fiber cable to a handpiece (delivery system) to illuminate a spot of 1 to 3 mm, using two lenses in the handpiece to image the distal end of the fiber to a larger spot with a single pulse. The laser has a pulse duration of 500 ns. Energy densities ranging from 0.25 to 3.0 J/cm<sup>2</sup> are disclosed (Col. 3, lines 1-7) and spot sizes from 1 to 3 mm (Col. 2, line 59). Dye lasers inherently have rise times less than 50  $\mu$ s and may be tuned to bandwidths as narrow as .01 nm. A specific pulse width and power level imply control means for these parameters.

Claims 20-28 are rejected under 35 U.S.C. 102(b) as being anticipated by CA 2 198 826 to Dudley. Dudley discloses a method for treating telangiectasias by targeting specific blood vessels with laser energy, the dosage and pulse widths being dependent on the diameter of the blood vessels targeted, specifically that small vessels do not require multiple pulses and may be effectively coagulated using a standard flashlamp pulsed dye laser (Page 10, lines 30-35). Specific radiation parameters disclosed (Table 2, column 3) are a 585 nm wavelength with a pulse duration of 450  $\mu$ s and energy of 4 J/cm<sup>2</sup>. Dudley also teaches the use of a Ruby laser (Page 10, line 4). Lasers are inherently coherent and have narrow bandwidths. Dye lasers inherently have rise times less than 50  $\mu$ s.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,312,395 to Tan et al. Tan is discussed above, but does not specifically disclose the

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distribution of the energy in the pulse. The shaping of laser energy is well known in the art. Many techniques including lenses and apertures can be employed to achieve the desired distribution of the laser energy. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the well-known beam shaping techniques in the invention of Tan to insure uniform exposure of the target area.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,312,395 to Tan et al. The use of semiconductor lasers is well known and pervasive in the art and It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the less expensive semiconductor laser in the invention of Tan to reduce the cost and complexity of the apparatus.

Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,312,395 to Tan et al. It is well known in the art and it would have been an obvious matter of design choice to radiate a broad band of energy and include optical fibers to limit the bandwidth in the device of Tan to deliver the radiation since Applicant has not disclosed that a specific mean for achieving a narrow bandwidth provides an advantage, is used for a unique purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with a narrow bandwidth produced directly from a laser source or such a beam filtered from a broadband source (i.e. flashlamp) because both provide a means to deliver the spectrum desired.

#### ***Allowable Subject Matter***

Claims 29-31 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

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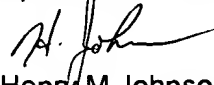
### **Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent 5,066,293 to Furumoto discloses a pulsed dye laser for selective photothermolysis.

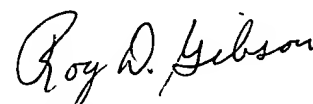
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Henry M Johnson, III whose telephone number is (703) 305-0910. The examiner can normally be reached on Monday through Friday from 6:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C Dvorak can be reached on (703) 308-0994. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Henry M Johnson, III  
Patent Examiner  
Art Unit 3739

Hmj

  
ROY D. GIBSON  
PRIMARY EXAMINER